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FACEBOOK, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MAXIMILIAN KLEIN and SARAH GRABERT,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

FACEBOOK, INC., a Delaware corporation,

Defendant.

Case No. 5:20-cv-08570-LHK

**DEFENDANT FACEBOOK, INC.'S
MOTION FOR ADMINISTRATIVE
RELIEF TO CONSIDER WHETHER
CASES SHOULD BE RELATED
AND CONSOLIDATED**

Judge: Hon. Lucy H. Koh

Pursuant to Civil Local Rule 3-12 and Federal Rule of Civil Procedure 42(a)(2), defendant Facebook, Inc. respectfully moves the Court to consider whether to relate *Ryan v. Facebook, Inc.*, No. 3:21-cv-02017 (“*Ryan*”) to, and consolidate it with, the cases consolidated in *Klein v. Facebook, Inc.*, No. 5:20-cv-08570-LHK (“*Klein*”).¹ Counsel for the advertiser plaintiffs agree to the relief sought; Facebook has not received a response from the user plaintiffs. The *Ryan* plaintiff agrees to the relief sought. A declaration from David Z. Gringer accompanies this motion.

Under Civil Local Rule 3-12(a), actions are related “when: (1) The actions concern substantially the same parties, property, transaction or event; and (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” That standard is easily met here. *Ryan*, like many of the cases consolidated with *Klein*, is brought on behalf a putative class of Facebook advertisers. *Ryan*, like other advertiser plaintiffs, also contends that Facebook unlawfully maintained a monopoly in a “social advertising” market through acquisitions and various forms of purportedly exclusionary acts. Compare *Ryan* Compl. ¶¶ 107-325 with *Affilious* Compl. ¶¶ 117-335. In addition, the *Ryan* plaintiffs request similar relief to the other advertiser plaintiffs. In light of the substantial factual and legal overlap, the threat of duplicative discovery, and the real threat of inconsistent judgments, *Ryan* and the *Klein* cases easily exceed the relevant standard for relation.

First, the cases “concern substantially the same parties, property, transaction or event.” Civil L.R. 3-12(a)(2)(1). Facebook is the defendant in the cases, and the advertiser cases are brought on behalf of Facebook users who purchased advertising. With respect to legal theories, the cases allege that Facebook unlawfully monopolized or attempted to monopolize a putative social advertising market in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. The cases focus primarily on Facebook’s acquisitions of Instagram and WhatsApp, and its regulation of

¹ The *Klein* cases have both advertiser and user plaintiffs. The advertiser cases are: *Affilious, Inc. v. Facebook, Inc.*, No. 20-cv-09217, *Layser v. Facebook, Inc.*, No. 21-cv-00337, and *Mark K. Wasvary, P.C. v. Facebook, Inc.*, No. 21-cv-001518. The user cases are: *Klein, Kupcho v. Facebook, Inc.*, No. 20-cv-08815, *Dames v. Facebook, Inc.*, No. 20-cv-08817, *Steinberg v. Facebook, Inc.*, No. 20-cv-09130, *Garvin v. Facebook, Inc.*, No. 21-cv-00618, and *Kovacevich v. Facebook, Inc.*, No. 21-cv-01117. *Sherman v. Facebook, Inc.*, No. 20-cv-08721, has both user and advertiser plaintiffs.

1 access to Facebook APIs.

2 **Second**, given the substantial factual and legal overlap between the cases, it is “likely
3 that there will be an unduly burdensome duplication of labor and expense ... if the cases are
4 conducted before different Judges.” Civil L.R. 3-12(a)(2). Because both of these cases involve
5 the same activity and many of the same legal theories, any discovery, motion practice, trials, and
6 potential remedies will substantially overlap. Thus, substantial efficiencies will be available in
7 discovery into each of these theories if these cases are related. Likewise, it would be inefficient
8 and unduly burdensome to “hav[e] ... different judges govern discovery disputes.” *Financial*
9 *Fusion, Inc. v. Ablaise Ltd.*, 2006 WL 3734292, at *3 (N.D. Cal. Dec. 18, 2006). All of these
10 cases were recently filed, and a consolidated complaints have not yet been filed. *Id.* at *4 (noting
11 lack of delay as factor in favor of relation).

12 **Third**, absent relation, there is a serious risk “of conflicting results.” *See* Civil L.R. 3-
13 12(a). Facebook anticipates raising similar defenses to the *Ryan* and other advertiser plaintiffs’
14 allegations, including that the claims are untimely and that the “social advertising” market is an
15 artificial and implausible construct. *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1121-1123 (9th
16 Cir. 2018). If the cases are not related, there is the real prospect, for example, that different
17 courts could reach different conclusions about whether fraudulent concealment theories can ever
18 be resolved on motions to dismiss or whether Facebook’s intent was sufficient to support a
19 fraudulent concealment claim. And because the two proposed classes overlap, conflicting
20 decisions could result in inconsistent remedies among a single group of people.

21 For many of the same reasons, these cases involve several “common question[s] of law or
22 fact.” Fed. R. Civ. P. 42(a). Thus, Facebook respectfully requests that the Court enter an order
23 relating *Ryan* to, and consolidating it with, *Klein*.

1 Dated: April 2, 2021

Respectfully submitted,

2 By: /s/ Sonal N. Mehta
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2021, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. And I hereby certify that I have served the foregoing document on counsel for the plaintiffs in the action in which relation is sought.

/s/ Sonal N. Mehta
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